REMARKS

Introduction

The above amendments and these remarks are responsive to the Office action mailed on March 17, 2008. Claims 1, 3, and 27–39 are pending in the application and are rejected in the Office action as unpatentable over US7223170 to Kinzer.

Applicant has studied the Office action and the cited reference, and respectfully traverses the rejections for at least the reason that Kinzer fails to disclose the subject matter of the rejected claims.

In this response, claim 1 is amended to further clarify the subject matter for which Applicant seeks protection. Remarks below, especially when considered in light of the amendments to claim 1, demonstrate the failure of Kinzer to disclose or even suggest the subject matter recited in the pending claims. Therefore, in view of the amendments and remarks herein, Applicant respectfully requests reconsideration of the application under 37 C.F.R. § 1.111 and allowance of the pending claims.

Claim Amendments

Of the pending claims, claim 1 is independent, and the remaining claims depend therefrom. Claim 1 is amended herein to more clearly specify the operability of the game scripts on the recited DVD. More particularly, claim 1 is amended to recite that the game scripts are operable to change an existing value of a game variable to a new value that is determined as a function of game controller input and the existing value of the game variable. Support for this amendment may be found, for example, in Fig. 7 and in paragraphs [0055]-[0063]. In the disclosed embodiment, for example, the game variable corresponding to a player's score may be increased, decreased, or otherwise modified to a new value that is determined as a function of

game controller input (e.g., whether a player entered correct input, for example corresponding to a response to a question) and the existing value of the game variable (e.g., a player's current score). Paragraph [0063] explains that "Other games may feature games structured by using game scripts to determine content to be played and game variable values to be changed as functions of input accepted from external data sources and values held by one or more variables." Claim 1 is also amended to recite that the game scripts are operable to control game flow based at least in part on the changed value of one or more game variables. Support for this amendment may be found, for example, in paragraph [0022].

Rejections under 35 USC § 103

Claims 1, 3, and 27–39 are rejected as unpatentable over Kinzer. The Office action asserts that Kinzer "generally" discloses "using a standard DVD player including a plurality of clips ... wherein a user controlled remote control ... is used to effect gameplay elements." More particularly, the Office action asserts that Kinzer discloses the game scripts recited in claim 1.

However, although Kinzer appears to discuss the use of a DVD player and its associated remote control device for gameplay that involves playback of clips on a DVD, it assuredly fails to disclose the subject matter recited in claim 1. Although Applicant in general disagrees with the construction urged in the Office action of various sections of the Kinzer reference as specific elements recited in the claims, the comments in this section demonstrate that Kinzer specifically fails to disclose game scripts as recited in claim 1. In particular, Kinzer fails to disclose at least *changing a value of the game variable to a value that is determined as a function of both game input accepted from a controller and the value of the game variable,* or *controlling game flow based at least in part on the changed value of one or more game variables*, as recited in claim 1.

Rather, Kinzer is directed to a comparatively simplistic method of playing a media game that includes using the memory of a DVD player to randomize playback of a predetermined set of clips without needing to track the clips already played (18:13-23). More specifically, Kinzer indicates that a set of values for randomizing a clip set includes a *current clip value* and a *jump value*, and that these values are initialized according to a user's selection, for example when a user uses a remote control to determine which game is to be played (19:4-31). The *current clip value* represents the next clip in a set of ordered clips to be processed, and the *jump value* represents the number of clips that are skipped over in determining the next clip to be played (19:32-55). Kinzer explains that either the number of clips in a set must be a prime number, or the jump value must be mathematically constrained to certain values, so that the modulo function used to "randomize" the order of clip playback will generate a series of shuffled, non-repeating clips until all of the clips in the set are played or processed (19:57-20:7). Because a certain mathematical relationship must exist between the number of clips in a particular set and the possible jump values that may be used, the initialization values may be predetermined, as shown in the value sets shown in the tables of Figs. 19A and 19B.

Kinzer thus fails to disclose at least *changing a value of the game variable to a value that is determined as a function of both game input accepted from a controller and the value of the game variable*. The only game variables disclosed in Kinzer are initialized (*i.e.*, assigned initial values) upon selection of a game by a user (7:65-8:10). Thereafter, the game variables either do not change until re-initialized (for example, the jump value remains constant until initialized to another value that is independent of its previous value), or change to a new value that is not a function of user input (for example, the current clip value is changed to a new value by adding the jump value according to the modulo function). Thus, although Kinzer explains that a user

may prompt the clip being processed to the next clip (7:33-34), the value that determines the next clip that is processed is *not* a function of user input – indeed, the value that determines the next clip is the same regardless of user input, because this is determined solely by the jump value and is independent of user input.

Moreover, it would not have been obvious to modify Kinzer to change a value of a game variable via a function that considers both the current value of the variable and user input, such as recited in claim 1. Rather, the clip randomization technique disclosed in Kinzer is configured to play every clip in a finite set with no repeats until all clips have been played, based on a modulo function that operates when a certain mathematical relationship exists between the number of clips in a set and the jump value (3:46-58). As such, the initialization values are predetermined for each game (8:6-8; Fig. 3, block 306). Thus, because a predetermined mathematical relationship must exist in order for the modulo function to randomize the clips for non-repeating play, and because the clip playback order is thereby determined at the point at which the values are initialized, it would not be obvious for the variable value change functions to consider user input. To modify the Kinzer system to do so would be contrary to the stated purpose of the Kinzer reference, and therefore cannot be considered to have been obvious.

In addition, Kinzer fails to disclose "*controlling game flow based at least in part on the changed value of one or more game variables*," as recited in claim 1. As demonstrated above, Kinzer does not disclose changing the value of game variables as recited in the claim. As such, it does not (and cannot) disclose controlling game flow based at least in part on such changed game variable values. As with the "*changing a value ...*" element discussed above, it cannot be considered to have been obvious to modify the Kinzer system to include this element, for at least the same reasons.

For at least the aforementioned reasons, Kinzer fails to disclose an interactive DVD gaming system as recited in claim 1. Thus, regardless of whether or not the summary of the Kinzer reference asserted in the Office action on page 3 is correct ("Generally, Kinzer et al. disclose ..."), Applicant notes that the Kinzer game system operates in a fundamentally different manner than that recited in claim 1.

With respect to the assertion in the Office action that Kinzer discloses a DVD player having a maximum of 1 kilobyte of onboard memory in light of Applicant's disclosure on page 8 of the specification, Applicant notes that the logic is circular and unsupported in the Kinzer reference. Applicant's disclosure indicates that "conventional DVD players may include 16 GPRMs ... each of which are configured to hold sixteen bits of data, for a total of 640 bits (or 80 bytes) of memory" (Paragraph [0027]). Applicant's disclosure also indicates that the term "conventional DVD players" refers to those DVD players that "generally include less than 1 kilobyte (1,024 bytes, or 8,192 bits) of onboard memory" (paragraph [0027]).

Kinzer discloses a DVD player with 16 GPRMs, but does not indicate the size of each, as correctly acknowledged in the Office action. However, the Office action seems to assert that because Kinzer discloses a DVD player with 16 GPRMs, then it must include less than 1 kilobyte of memory.

This assertion is unsupported. Applicant's disclosure nowhere indicates that the GPRMs or other memory allocation structure in all DVD players are of a certain size, only that some do. Moreover, Kinzer expressly indicates that not all DVD players conform to the same specifications (17:62-64). One example of this nonconformity is explained in Kinzer in the context of whether a DVD player reliably generates random values according to specifications (17: 59-66). Indeed, because not all DVD players conform to specifications and may be relied

on to generate random values usable by the Kinzer system to generate a randomized order of clip playback, Kinzer discloses the selection of a seeded random number instead of a random number generated by the DVD player, to assure proper shuffling of clips according to the system briefly discussed above. Kinzer thus demonstrates that it is erroneous to conclude that even "conventional" DVD players operate or conform to recognized specifications and that there is considerable variation in the operability and structure of DVD players. Because of this, and also because Applicant's disclosure and the Kinzer reference are both silent as to the size of the memory of all DVD players, it is improper to conclude that Kinzer discloses a DVD player having a maximum of 1 kilobyte of onboard memory. As such, the Office action fails to indicate that the Kinzer reference discloses this additional element of claim 1.

For at least any of the aforementioned reasons, Kinzer fails to disclose an interactive DVD gaming system as recited in claim 1. Accordingly, claim 1 is allowable over the references of record, and the rejection of claim 1 over the Kinzer reference should be withdrawn.

Moreover, because the remaining pending claims 3 and 27–39 depend from, and recite additional subject matter to, claim 1, the remaining pending claims are allowable for at least any of the reasons that claim 1 is allowable. However, for completeness, the remarks below identify selected elements of these dependent claims that are not disclosed in Kinzer.

Claim 27, for example, additionally recites that the game scripts are further operable to change the value of a game variable to a different value depending on the type of game input accepted from the controller. As noted above, Kinzer fails to disclose changing the value of a game variable to a value determined as a function that considers user input; as such, it also fails to disclose considering the nature of such input, i.e., whether the input is of one type or another, as recited in claim 27.

Claim 31, for example, additionally recites selection of audiovisual content as a function of the value of a game variable and user-provided input. As demonstrated above, Kinzer fails to consider user input except in two limited circumstances: in initializing the game variables (in which case, the previous values, if any, of such game variables are not considered), and in skipping to the next clip during playback of the present one (in which case, the next value of the "current clip value" is based on the current value and the jump value, and does not consider user input). As such, Kinzer fails to disclose or even suggest selection of audiovisual content, such as in the form of a clip, as a function of both the value of a game variable and user-provided input, as recited in claim 31.

With regard to claim 32, the Office action asserts that "nearly all communications systems must be operable to distinguish between inputs," and cites Kinzer 7:29-34 in support of the assertion that Kinzer in particular discloses such subject matter. Kinzer recites that the DVD player is responsive to different inputs from the remote control. Thus, regardless of the truth of this assertions in the Office action, Applicant notes that claim 32 recites that one or more *game scripts* are operable to distinguish between first and second game inputs provided by the communication system. As recited in claim 1, the game scripts are included in the data on the DVD. Kinzer thus fails to disclose at least the additional subject matter recited in claim 32.

Claim 33 recites "wherein the DVD player includes no more than eight general parameter register memories." The Kinzer DVD player has sixteen GPRMs. Clearly, Kinzer fails to disclose at least this subject matter, and the Office action does not assert otherwise.

Claim 36 recites "wherein at least one general parameter register memory is segmented to hold more than one variable." The Office asserts that "inherent of such memories, the register memories include segments of bits and bytes." Applicant is unaware that such a feature is

inherent, and no support is cited in the Office action in support of this assertion. Segmentation is a memory formatting technique, and Kinzer does not disclose that segmentation is used in information storage in the disclosed game system.

Claim 37 recites "wherein the DVD player includes no more than 80 bytes of memory." Kinzer fails to disclose the size of the DVD player memory, as noted above, and also expressly indicates that not all DVD players conform or operate according to specifications. As such, it is inappropriate to conclude that Kinzer discloses the subject matter recited in claim 37.

Conclusion

Applicant believes that this application is now in condition for allowance, in view of the above amendments and remarks. Accordingly, applicants respectfully request that a Notice of Allowance be issued that covers the pending claims. If the Examiner has any questions, or if a telephone interview would in any way advance prosecution of the application, he is encouraged to contact the undersigned attorney of record.

CERTIFICATE OF E-FILING

I hereby certify that this correspondence is being transmitted electronically via the United States Patent and Trademark Office's EFS-Web System on June 17, 2008.

Allison M. Deverman Vietor

Allison M. Deverman Vietor

Respectfully submitted,

KOLISCH HARTWELL, P.C.

Timothy M. Whalen
Registration No. 58,467
Customer No. 23581
Attorney for Applicant/Assignee
520 S.W. Yamhill Street, Suite 200
Portland, Oregon 97204
Telephone: (503) 224-6655
Facsimile: (503) 295-6679